

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN JIM SHOCKLEY**, on March 12, 2003 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Jim Shockley, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Jeff Laszloffy, Vice Chairman (R)
Rep. George Everett (R)
Rep. Tom Facey (D)
Rep. Steven Gallus (D)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Michael Lange (R)
Rep. Bruce Malcolm (R)
Rep. Brad Newman (D)
Rep. Mark Noennig (R)
Rep. John Parker (D)
Rep. Holly Raser (D)
Rep. Diane Rice (R)
Rep. Scott Sales (R)
Rep. Ron Stoker (R)
Rep. Bill Thomas (R)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pamela Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed. The time stamp for these minutes appears at the end of the content it refers to.

Committee Business Summary:

Hearing & Date Posted: SB 238, SB 139, 3/5/2003

Executive Action: SB 238-Be Concurred In/Place
On Consent Calendar

SB 139-Be Concurred In/Place
On Consent Calendar

HEARING ON SB 223

Sponsor: SEN. WALTER MCNUTT, SD 50, Sidney, Montana

Opening Statement by Sponsor:

SEN. MCNUTT opened the hearing on SB 223 by stating to the Committee that currently the nonuse of seat belts is not negligent in court proceedings relating to damages, and this information cannot be used as evidence in damage claims.

SB 223 would mandate that all the information presently not allowed in court proceedings regarding negligence and damages may now be submitted as evidence and the negligent party may lose up to 25% of those damages.

EXHIBIT(juh52a01)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 52}

Proponents' Testimony:

Ray Kuntz, Watkins and Shepard Trucking Company, American Trucking Association Insurance Task Force, spoke to the Committee regarding the current crisis in the trucking industry; much of it being caused by the insurance problems.

Mr. Kuntz spoke further of the multitude of trucking companies going bankrupt, the rise in the cost of insurance rates and how his company attributes a part of that to the non-use of seat belts. He and his company support SB 223.

EXHIBIT(juh52a02)

EXHIBIT(juh52a03)

{Tape: 1; Side: A; Approx. Time Counter: 52 - 142}

Steve Turkiewitz, Montana Auto Dealers Association, addressed the Committee by stating that this association was one of the original coalitions that helped get the seat belt statute passed.

Mr. Turkiewicz proceeded to inform the Committee that using seat belts is a personal responsibility. He then asked the question, "If you do not use a seat belt, and are involved in an accident, why shouldn't that evidence be supplied in the court proceedings when considering damages?"

{Tape: 1; Side: A; Approx. Time Counter: 142 - 182}

Susan Good, Montana Surgical Specialities, rose in support of SB 223.

{Tape: 1; Side: A; Approx. Time Counter: 182 - 203}

John Sullivan, Montana Defense Trial Lawyers, spoke in support of SB 223. He stated that, by not wearing a seat belt a person is in violation of the statute and should be considered negligent in court proceedings regarding damages. He further spoke to the Committee about the amount of work done on this bill when in the Senate, the evidence that would be used in reducing the damages, and that the ultimate responsibility is that of the person not wearing a seat belt.

{Tape: 1; Side: A; Approx. Time Counter: 203 - 282}

Barry "Spook" Stang, Montana Motor Carriers Association, informed the Committee that presently 3.5% of the operating costs of a trucking business is spent on insurance; with those premium rates being raised approximately 32% per year. Mr. Stang continued to speak about "Tort" reform, compensatory damages, and punitive damages.

EXHIBIT(juh52a04)

{Tape: 1; Side: A; Approx. Time Counter: 282 - 372}

Dennis Iverson, Montana Contractors Association, rose in support of SB 223.

{Tape: 1; Side: A; Approx. Time Counter: 372 - 390}

Don Allen, Western Environmental Trade Association, spoke in favor of SB 223.

{Tape: 1; Side: A; Approx. Time Counter: 390 - 413}

Brad Griffin, Montana Tire Dealers Association, spoke in support of SB 223.

{Tape: 1; Side: A; Approx. Time Counter: 413 - 420}

Web Brown, Montana Chamber of Commerce, rose in support of SB 223.

{Tape: 1; Side: A; Approx. Time Counter: 420 - 430}

Jacqueline Lenmark, American Insurance Association, rose in support of SB 223.

{Tape: 1; Side: A; Approx. Time Counter: 430 - 450}

Opponents' Testimony:

Al Smith, Montana Trial Lawyers Association, rose in opposition to SB 223. He stated that not wearing seat belts does not harm anyone. **Mr. Smith** further stated that this Legislature had the opportunity to make not wearing a seat belt a primary offense; however, that did not happen. This bill cannot guarantee that there will be a decrease in the insurance premiums and this bill will add another tier of litigation. The trucking industry will not be saved if this bill is made into law.

Mr. Smith also stated that this bill would increase the time taken for payment of insurance claims, will not increase the use of seat belts, and that the public will not be aware of this statute so this bill will not significantly impact seat belt usage as the proponents have stated.

EXHIBIT(juh52a05)

{Tape: 1; Side: B; Approx. Time Counter: 0 - 177}

Informational Testimony: None

Questions from Committee Members and Responses:

REPS. NEWMAN, HARRIS, RICE, LASZLOFFY, GALLUS, NOENNIG, FACEY, CLARK, LANGE and RASER, questioned the sponsor and proponents extensively about the "25%" language in SB 223, damages, the person responsible for the accident and their liability, negligence and the rare occurrence of a seat belt malfunctioning. Also discussed was use of "breach of duty", tort law and the current statutes that would be affected.

{Tape: 1; Side: B; Approx. Time Counter: 177 - 500}

{Tape: 2; Side: A; Approx. Time Counter: 0 - 400}

Closing by Sponsor:

SEN. MCNUTT closed the hearing on SB 223 by stating that Montana has a seat belt law in place, but that it is still acceptable not to wear them. He also stated that he would be amenable to an amendment regarding the "25%" cap language.

{Tape: 2; Side: A; Approx. Time Counter: 400 - 471}

HEARING ON SB 238

Sponsor: **SEN. JEFF MANGAN, SD 23, Great Falls, Montana**

Opening Statement by Sponsor:

SEN. MANGAN opened the hearing on SB 238 by stating he was appointed to the Montana Youth Justice Council and that this bill is one of two that Council has brought forth in this session. He stated that in the last Federal Audit, there was concern about "status offenders" being committed to secured detention. The Federal law does not allow youth that have committed a status offense be held in secured detention.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 51}

Proponents' Testimony:

Audrey Allums, Montana Board of Crime Control, rose in support of SB 238. She stated that this bill will provide clarification in the present statute. The present statute allows for "boot strapping" in the courts and that Montana may lose juvenile funding money if not corrected in the statutes.

{Tape: 2; Side: B; Approx. Time Counter: 51 - 80}

Scott Crichton, ACLU, rose in support of SB 238.

{Tape: 2; Side: B; Approx. Time Counter: 80 - 87}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

SEN. MANGAN closed the hearing on SB 238.

{Tape: 2; Side: B; Approx. Time Counter: 87 - 90}

EXECUTIVE ACTION ON SB 238

Motion/Vote: REP. NEWMAN moved that SB 238 BE CONCURRED IN.
Motion carried unanimously. (voice vote)

Motion/Vote: REP. NEWMAN moved SB 238 be PLACED ON THE CONSENT
CALENDAR. Motion carried unanimously. (voice vote)

{Tape: 2; Side: B; Approx. Time Counter: 90 - 119}

EXECUTIVE ACTION ON SB 139

Motion: REP. GUTSCHE moved that SB 139 BE CONCURRED IN.

Discussion:

REPS. FACEY, CLARK, and LASZLOFFY discussed SB 139 in short
detail.

Vote: Motion that SB 139 BE CONCURRED IN carried unanimously.
(voice vote)

Motion/Vote: REP. GUTSCHE moved SB 139 be PLACED ON THE CONSENT
CALENDAR. Motion carried unanimously. (voice vote)

{Tape: 2; Side: B; Approx. Time Counter: 119 - 130}

ADJOURNMENT

Adjournment: 11:02 A.M.

REP. JIM SHOCKLEY, Chairman

PAMELA SCHINDLER, Secretary

JS/PS

EXHIBIT (juh52aad)